

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SLUHCV 2006/0170

BETWEEN

1. HAZEL AUGUSTIN
2. LEO FEVRIER

Claimants

And

ALLAN ST. ANGE

Defendant

Appearances:

Mr. Dexter Theodore for the Claimants
Mr. Andie George for Defendant

.....
2013: 25th July
2nd 7th August
.....

DECISION ON ASSESSMENT OF DAMAGE

- [1] This is a simple claim for damages arising out of a motor vehicle accident occurring on the 2nd February, 2007 at 8:10 a.m., along the La Ressource high road.
- [2] The facts and liability are now undisputed, summary judgment having been entered for the claimants on the 30th April 2013.
- [3] The defendant contributed to the assessment by assisting in narrowing the areas of damages where there was disputation in the award sought.

- [4] The normal measure of damages for injury caused and resulting from an act of a defendant is accepted to be the measure of damages awarded under the English common law and as such a person who has been physically injured and whose property has been injured can recover both for his pecuniary losses and his non pecuniary losses. He is entitled to medical and other expenses to which he is put as a result of his injury, reasonably incurred by him.
- [5] The burden of proving both the fact of and amount of damage recoverable is the claimant who has so alleged. While certain general damages can be inferred or presumed, in this case proof of injury must be established before any further inference can be made as to personal injury. The claimants have failed to provide any evidence in support of the injuries they sustained, and without more, I decline to make any award for general damages.

Special Damages

- [6] The defendant conceded the claim for special damage with the exception of the claim for loss of use and the claim for reimbursement of the unexpired portion of the insurance premium paid for the vehicle damaged as a result of the accident. I propose to consider these now.

Loss of use

- [7] The claim for loss of use is one for the sum of two hundred and fifty dollars (\$250.00) per day for a period of one month, the vehicle being a totally written off as a result of the accident.
- [8] The claimants submit that their claim is reasonable. They allege that our courts have in certain circumstances awarded loss of use up to a period of six (6) months where the vehicle in question had been written off, and it was reasonable to so award. The claimants also relied on the decision of **Blenman J** as she then was in **Tropical Builders v Gloria Thomas ANUHCV228/2004** where her Ladyship

considered a daily sum of one hundred and fifty dollars (\$150.00) for a period of seventy three (73) days for a non profit earning Chattel.

- [9] The defendant did not dispute the period of one month claimed but took issue with the sum of two hundred and fifty dollars (\$250.00), although he recognized the vehicle to be a profit earning vehicle. I disagree with his contention that a figure of between \$100 - \$150 is a satisfactory daily factor.
- [10] I see no reason to discount the claim for loss of use, which I consider to be reasonable in the circumstances. I have also considered all the other heads of special damages including the claim for the unexpired portion of the insurance premium, and I find them to be supported.
- [11] I therefore award special damages to the claimants in the sum of twenty nine thousand two hundred and sixty five dollars (\$29,265.00), together with interest on calculated at the rate of 6% per annum from the 2nd May, 2004 and continuing to payment in full and 60% prescribed costs being two thousand six hundred and thirty three dollars and eighty five cents (\$2,633.85).
- [12] And I so order.

**V. Georgis Taylor - Alexander
High Court Master**